

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MERLIN PETROLEUM COMPANY, INC., :
: **MEMORANDUM OPINION**
: **AND ORDER**
Plaintiff, :
:
-against- :
: 09 Civ. 5510 (JFK)
EASTWIND TRANSPORT, INC.; :
EASTWIND MARITIME S.A.; :
EASTWIND LTD.; :
EASTWIND INVESTMENT; and :
EASTWIND MARITIME, INC. :
:
Defendants. :
----- X

JOHN F. KEENAN, United States District Judge:

Plaintiff Merlin Petroleum Company, Inc., moves pursuant to Rule 64 of the Federal Rules of Civil Procedure¹ and N.Y. C.P.L.R. § 6201 for an order attaching, inter alia, "funds representing electronic funds transfers" ("EFTs"). (Pl.'s Proposed Order 2.) The Court denies Plaintiff's motion in light of Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd., 460 F.3d 434, 446 n.6 (2d Cir. 2006) ("Under [New York] state law, the EFT could not be attached because EFTs are property of neither the sender nor the beneficiary while present in an intermediary bank." (citing N.Y. U.C.C. Law §§ 4-A-502 cmt. 4, 4-A-504 cmt.

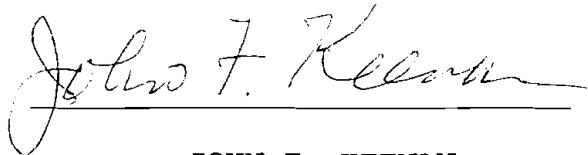
¹ Rule 64 permits parties to make use of "every remedy available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment." In this case, Plaintiff seeks to make use of New York's attachment remedy. See N.Y. C.P.L.R. § 6201.

1)). Plaintiff may submit an amended proposed order that seeks to attach appropriate property.

SO ORDERED.

Dated: New York, New York

June 17, 2009



JOHN F. KEENAN

United States District Judge